



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590



REPLY TO THE ATTENTION OF:

NOV 25 2002

Ms. Karen A. Mignone, Esq.
Pepe & Hazard LLP
30 Jellif Lane
Southport, Connecticut 06490-1436

Dear Ms. Mignone:

Thank you for your letter dated November 18, 2002, which you wrote on behalf of Hobart Corporation, Delphi Automotive Systems LLC, Dayton Power & Light Company and Waste Management. As you noted, the companies named were all recipients of a Special Notice letter, dated September 26, 2002, sent by U.S. EPA. That Special Notice, sent pursuant to Section 122 (e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) 42 U.S.C. 9622 (e), invited the companies named above, *inter alia*, to negotiate a Consent Order for a Remedial Investigation and Feasibility Study (RI/FS) of the South Dayton Dump Site, a Superfund Site located at 1976 Dryden Road a/k/a Springboro Pike in Moraine Ohio.

The terms of the statute impose a moratorium period of ninety (90) days after Special Notice is given. Except as provided in this subsection, the United States may not commence a remedial investigation and feasibility study under Section 9604(b) of this title for 90 days after provision of such notice. The statute also provides that persons receiving such notice with respect to action under Section 104(b) of CERCLA, 42 U.S.C. 9604(b) shall have sixty (60) days in which to make a proposal for undertaking or financing the action under section 104(b), the RI/FS. The Special Notice sent in this matter directed the parties receiving such notice to send such a proposal (good faith offer) by November 26, 2002.

Your letter indicated that the companies you represent sought to meet that deadline but were unable to do so. You say that they worked diligently but that special difficulties require additional time. You indicate that the parties you represent wish to be granted additional time to obtain more specific information about the Site and to seek to identify additional viable parties to participate in the process. You asked for an extension of ninety (90) additional days, until February 24, 2002, in which to pursue your investigations of the available records in local, federal and state agencies, and to search for additional potentially responsible parties, before deciding whether or not to make a good faith offer.

The period of the moratorium is defined by statute. See Section 122 (e)(2)(A), 42 U.S.C. 6922(e)(2)(A). Most of the parties you represent received a general notice regarding their

liability at this Site and information requests regarding the Site as long ago as March 29, 2002. They have, therefore already had ample time to review available government records, ask questions and seek additional, viable, potentially responsible parties who might assist in addressing the required investigation of this Site.

U.S. EPA is prepared to wait for 45 more days, until January 10, 2002, for the parties who received Special Notice to come forward with a "good faith" offer to undertake or finance the Remedial Investigation and Feasibility Study (RI/FS) of the South Dayton Dump Site. If a "good faith" offer is received by U.S. EPA by that time, U.S. EPA is willing to negotiate for another thirty (30) days in order to complete an agreement by signing an Administrative Order on Consent for the RI/FS. U.S. EPA will not contemplate any further extension of the time frames for negotiation. If negotiations do not result in the signature of an Administrative Order on Consent for the RI/FS, U.S. EPA will look at one or more other enforcement options for investigating the Site. These options include, but are not limited to, funding the Site investigation, listing the Site on the NPL, and issuing an Order for the Site investigation.

If you have any questions regarding the South Dayton Dump Site or this extension, please feel free to contact Ms. Karen Cibulskis, Remedial Project Manager at (312) 886-1843. Legal questions may be directed to Mr. Thomas Nash, Assistant Regional Counsel at (312) 886-0552.

Sincerely,

A handwritten signature in cursive script, appearing to read "Wendy L. Carney".

Wendy L. Carney, Chief
Remedial Response Branch #1